

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 758 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JOHN MANSING THAKUR

Versus

THE STATE OF GUJARAT

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Appearance:

MR DEEPAK M SHAH, Advocate appointed for Petitioner  
MR. Y.F. MEHTA, ADDL. P.P. for the respondent.

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 08/01/97

ORAL JUDGEMENT (Per N.J. Pandya, J)

The accused-appellant was tried for charge of murder in Sessions Case No. 81 of 1987 before the learned Sessions Judge of Bulsar at Navsari. By judgement dated 29.8.1988 the learned trial judge was pleased to hold the accused-appellant guilty and therefore awarded rigorous

imprisonment for life.

2. The case against the accused-appellant was that he had tried to commit rape of his step-daughter named Lila aged about 20 years and when he failed in his object, he threatened her with dire consequences if she were to reveal this attempt to anyone. She insisted that she will disclose this fact and that caused her life. Enraged by her insistence, the accused-appellant poured kerosene on her and put her to flame.

3. Complaint came to be given by the mother of the deceased Savitaben which is the case of the prosecution. However, before the trial court in course of deposition she had chosen not to support the prosecution and therefore her statements in form of FIR was brought to her notice by way of confrontation and contradiction. One more witness, a neighbour has also not supported the prosecution, namely witness Shailesh PW 3.

4. The learned judge, however, had before him the case history as recorded by Doctor who had admitted the deceased in Bulsar Government Hospital and has produced the case papers at Exh. 13. In the very opening part of the case paper it has been noted that father of the girl has burnt her as he was off and on keeping an evil eye on her.

5. The Doctor had called the police and they in turn moved the matter also to the Executive Magistrate. The Executive Magistrate of the area was requested to record the dying declaration by 1.15 a.m. in the middle of the night and he responded to it within 15 minutes. Yadi sent to him is at Exh. 20 where the Doctor who treated the girl at the relevant time has put an endorsement that the patient is in a position to give replies.

6. The dying declaration came to be recorded which is at Exh. 19. In any circumstances the girl has implicated the accused-appellant.

7. Thus the dying declaration read with the said case history in Exh. 14 has brought about the consistent story against the accused appellant and that itself is the case of the prosecution against him. The girl breathed her last on 26.8.1987. Looking to the passage of time and especially when the statement was recorded on the day of the incident itself within 4 to 5 hours of the same, in our opinion the reliance placed by the learned judge on these two materials cannot be said to be any way faulty.

8. We are convinced that the materials do inspire confidence and therefore the conviction based on it cannot be said to be wrong in any way.

9. The net result is therefore that the appeal fails and it is accordingly dismissed. The order of the trial court is confirmed.

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